IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.18410 of 1997

Dated: 23-02-2007

Between:

Y. Krishna Reddy, s/o Y. Appi Reddy,
aged about 57 years,
r/o H.No.3-5-1090/A/10,
Narayanaguda, Hyderabad.

... Petitioner

and

1. The Mandal Revenue Officer,
   Himayatnagar Mandal,
   Hyderabad and another.

... Respondents

ORDER:

Petitioner, a practicing advocate, states that as per the request of the entrepreneurs, he consented to function as a Director in the Board of Directors of M/s. Sanjeeva Pulp and Papers Limited, at Gadikota, Giddalur Taluq, Prakasam District. There were four

nominees of public institutions as Directors in the said Company, out of whom two nominees were appointed by the second respondent, one nominee by Andhra Pradesh State Finance Corporation and one nominee by Bank of Baroda. Soon after commencement of business, the said company went into financial problems due to various reasons including malfunctioning of the successive Managing Directors leading to stoppage of production. He also states that the second respondent sent a registered letter vide ED(P)/RRD/SPPL/105/96, dated 14-05-1996 to him to the effect that the industrial unit of the said Company was seized under Section 29 of the State Finance Corporation Act and sold for recovery of the amount due and after adjustment of the sale proceeds there was still an amount of Rs.140.40 lakhs due from the said Company and that as guarantor he is also personally liable to pay the said amount. He further states that he issued reply dated 27-05-1996 denying the allegations with regard to his liability and stated that he is not in a position to move from bed in view of serious ailment of cervical spondylitis for over a month and, therefore, requested the second respondent to grant time to verify the record and accounts for giving appropriate reply. Surprisingly the first respondent, basing on the certificate issued by the Collector, Hyderabad, issued the impugned notice bearing No.B/2379/97, dated 23-07-1997 to him calling upon him to pay the alleged arrears of Rs.140.40 lakhs with interest @ 6% to the second respondent within seven days from the date of the said notice, failing which coercive steps to recover the said amount under the provisions of Andhra Pradesh Revenue Recovery Act, 1864

(for short, 'the Act') would be taken. Questioning the said Notice, the present writ petition has been filed seeking to quash the same.

2. Despite the fact that the name of the second respondent is

printed in the cause-list none appeared for the second respondent nor any counter affidavit is filed. In fact, only to enable the second respondent Corporation to come forward with a counter affidavit denying the said allegations made by the petitioner, this Court adjourned the matter twice and accordingly, yesterday, it listed the case under the caption
'for judgment'. Even today none appeared for the respondents.

3. Heard learned senior counsel for the petitioner.

4. Learned senior counsel appearing for the petitioner mainly contended that the petitioner never signed the agreement of guarantee, dated 13-05-1987 and even assuming for a moment that petitioner has executed the agreement of guarantee, the respondent Corporation is not one of those institutions covered under the Act to initiate proceedings under the provisions of the said Act.

5. As already stated, the bone of contention according to the learned senior counsel is twofold i.e. the alleged agreement of guarantee dated 13-05-1987 was never executed and the Andhra Pradesh Industrial Development Corporation is not one of those Corporations, which is notified for initiating action under the Act. These two contentions have not been controverted by the respondents. As this Court has not received required assistance from the respondents, the said contention put forth by the learned senior counsel is accepted. In this context, learned senior counsel has drawn my attention to one of the judgments of the Supreme Court reported in **SMT. NASEEM BANO v. STATE OF U.P AND OTHERS**[1], wherein it was held at paragraph 11 as follows--

"……Since no dispute was raised on behalf of

> respondents 1 to 4 in their reply to the averments made by the appellant in the writ petition that 40% of the total number of posts had not been filled by promotion inasmuch as the said averments had not been controverted, the High Court should have proceeded on the basis that the said averments had been admitted by respondents."

6. As the execution of the agreement of guarantee is the vital issue and when the same is disputed stating that the petitioner had never executed such an agreement of guarantee and when the same has not been controverted by the respondents, this Court has no option except to accept the averments made in the affidavit filed in support of the petition as well as the contention put forth by the learned counsel for the petitioner and thus give the relief as prayed for. However, having regard to the fact that Court did not go into the merits of the case, it is made clear that the said factual matrix is left open to be agitated, if required.

7. Accordingly, the writ petition is allowed and the Notice bearing No.B/2379/97, dated 23-07-1997 issued by the first respondent is quashed. No costs.

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JUSTICE GOPALAKRISHNA TAMADA

Dt.23-02-2007
GLV

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[1] **AIR 1993 SUPREME COURT 2592**